

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION  
CAUSE NO. 1:12-cv-561

ANN GARDNER, et al., )  
                          )  
Plaintiffs,            )  
                          )  
-vs-                    )  
                          )  
WELLPOINT, INC.,        )  
                          )  
Defendant.             )

The deposition upon oral examination of KAREN S. AMSTUTZ, a witness produced and sworn before me, Dana S. Miller, a Notary Public in and for the County of Hendricks, State of Indiana, taken on behalf of the Plaintiffs at the offices of Gonzalez, Saggio & Harlan, 135 North Pennsylvania Street, Suite 1740, Indianapolis, Marion County, Indiana, on the 28th day of June, 2013, at 1:07 p.m., pursuant to the Federal Rules of Civil Procedure.

CIRCLE CITY REPORTING  
135 North Pennsylvania  
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Indianapolis, IN 46204  
(317) 635-7857



1 A P P E A R A N C E S

2 FOR THE PLAINTIFF(S): Mark J. Byrne, Esq.

3 JACOBS KLEINMAN SEIBEL & McNALLY

4 30 Garfield Place

5 Suite 905

6 Cincinnati, OH 45202

7 FOR THE DEFENDANT(S): Alejandro Valle, Esq.

8 GONZALEZ SAGGIO & HARLAN LLP

9 135 N. Pennsylvania Street

10 Suite 1740

11 Indianapolis, IN 46204

12 ALSO PRESENT: Ann Gardner

13 Pamela Kapustay

14 I N D E X O F E X A M I N A T I O N

15 PAGES

16 DIRECT EXAMINATION ..... 3

17 QUESTIONS BY MARK J. BYRNE

18 I N D E X O F E X H I B I T S

19 PAGES

20 107 - (Previously Marked) ..... 19

21

22

23

24

25

1 KAREN S. AMSTUTZ, having been first duly  
 2 sworn or affirmed to tell the truth, the whole  
 3 truth and nothing but the truth relating to said  
 4 matter, was examined and testified as follows:

## 5 DIRECT EXAMINATION

## 6 QUESTIONS BY MARK J. BYRNE:

7 Q. Good afternoon, ma'am. My name is Mark Byrne, and  
 8 I represent Ms. Kapustay and Ms. Gardner in a claim  
 9 that's been brought against WellPoint. I'm just  
 10 going to ask you some questions today relating to  
 11 your involvement in their termination and the  
 12 investigation of the involvement.

13 It seems as though I'm starting to lose my  
 14 voice after two days of doing this, so I'll try to  
 15 speak up a little bit louder for you, but just a  
 16 couple of simple rules. One is if you don't  
 17 understand a question I ask, let me know, I will  
 18 I'll try to rephrase it to make it more  
 19 understandable. Okay?

20 Secondly, you need to respond verbally to any  
 21 question I ask. The court reporter to my right is  
 22 doing a masterful job after two days of this, but  
 23 she can't go ahead and take down a response unless  
 24 it's verbal.

25 A. Okay.

1 Q. So a shrug of the shoulders or nod of the head  
 2 doesn't work, nor does an um-hum, even though I  
 3 have a bad habit of doing that, also.

4 Thirdly, it's hard for her to take down two  
 5 people at the same time. So if you let me finish  
 6 my question, I'll try to extend the same courtesy  
 7 to you and allow you to finish your answer before I  
 8 ask another question. All right?

9 And then, finally, if you want to take a break  
 10 at any time, feel free to ask, I'd be more than  
 11 happy to accommodate you. Hopefully we won't have  
 12 you here very long. Okay? Because we've done a  
 13 lot of depositions, and the issues seem to be  
 14 crystallizing here somewhat.

15 Can you tell me your present home address?

16 A. It is [REDACTED] and that's  
 17 [REDACTED], Indiana [REDACTED]

18 Q. And what's your date of birth?

19 A. [REDACTED], 1962.

20 Q. And are you presently employed?

21 A. Yes.

22 Q. Where is that?

23 A. I'm employed by xG Health Solutions, Incorporated.

24 Q. Is that --

25 A. Little X big G and then Health Solutions. Their

3 corporate offices are in Columbia, Maryland.  
 4 Q. What's the location here in Indianapolis that you  
 5 work out of?  
 6 A. I work from my home.  
 7 Q. And what is your position at xG?  
 8 A. I'm Vice President and Senior Medical Director.  
 9 Q. What does xG Health Solutions do?  
 10 A. We provide a series of product services -- products  
 11 and services which are solutions for accountable  
 12 care organizations.  
 13 Q. And what's an accountable care organization?  
 14 A. Accountable care organization as defined in the  
 15 Patient -- the PPACA --  
 16 Q. PPACA?  
 17 A. -- and other like organizations.  
 18 Q. I would ask you --  
 19 A. So that's the Patient Portability and Accountable  
 20 Care Act.  
 21 Q. Sure, March of 2010?  
 22 A. Correct.  
 23 Q. I would ask you what page, but it would take three  
 24 months.  
 25 A. It would probably take me six months to answer.  
 Q. It took me three months to read it, and I was only  
 looking at the false claim provisions. But

4 6

1 anyways, when did you leave WellPoint?  
 2 A. January 10th, 19 -- or excuse me, 2011.  
 3 Q. And why did you leave?  
 4 A. I was recruited by xG to join their team.  
 5 Q. So it was a voluntary termination?  
 6 A. Yes.  
 7 Q. You left on your own volition, so to speak?  
 8 A. Correct.  
 9 Q. How has the move worked out for you?  
 10 A. Very well.  
 11 Q. It's not really fair to ask you that question.  
 12 With regard to your educational background, can you  
 13 tell me where you went to college?  
 14 A. Indiana University in Bloomington, Indiana.  
 15 Q. And what was your major?  
 16 A. Bachelor of Arts in chemistry.  
 17 Q. And what year did you graduate?  
 18 A. 1984.  
 19 Q. Upon graduation in '84, what did you do?  
 20 A. I entered medical school at Washington University  
 21 in St. Louis. And I graduated from Wash U in 1988.  
 22 Q. With an M.D.?  
 23 A. Yes.  
 24 Q. And then upon graduation in 1988, what did you do?  
 25 A. Started an internship.

1 Q. In what area?  
 2 A. Internal medicine at Barnes Hospital.  
 3 Q. And I don't know where Barnes is. Where is Barnes?  
 4 Is that in St. Louis?  
 5 A. St. Louis.  
 6 Q. How long did you intern there?  
 7 A. Twelve months.  
 8 Q. Then what did you do?  
 9 A. Then I moved to Boston, and I had a series of  
 10 positions in emergency rooms and urgent care.  
 11 Q. So you worked in certain hospitals in the ER?  
 12 A. Uh-huh.  
 13 Q. Is that a yes?  
 14 A. Yes.  
 15 Q. And then you worked in certain urgent cares  
 16 throughout the Boston area?  
 17 A. Yes.  
 18 Q. All right. How long did you -- when you say you  
 19 worked at certain hospitals, were you working for a  
 20 group?  
 21 A. No.  
 22 Q. Okay.  
 23 A. I was an independent contractor.  
 24 Q. So you would actually contract with the hospital on  
 25 an independent basis on your own?

1 Q. What was the position?  
 2 A. I was a Clinical Assistant Professor of pediatrics.  
 3 I also was a chief resident for six months from 1/1  
 4 of '94 through 6/30 of '94.  
 5 Q. And then what?  
 6 A. Then I continued in that position.  
 7 Q. Continued as a chief resident or ...  
 8 A. Oh, continued as the Clinical Assistant Professor  
 9 of pediatrics.  
 10 Q. I was going to say, you're glutton for punishment  
 11 if you continued as a chief resident.  
 12 A. Yeah, or any kind of resident.  
 13 Q. There's no doubt about that. How long did you  
 14 remain a clinical assistant?  
 15 A. Through 12/31 of 2004.  
 16 Q. And then how did your employment situation change?  
 17 A. I started working for WellPoint, I think it was  
 18 January 10th of 2005.  
 19 Q. Well, I'm sure that you've given previous  
 20 depositions, then.  
 21 A. I have not.  
 22 Q. You have not? You're a newbie, so to speak?  
 23 A. Yes.  
 24 Q. So what was your position when you started at  
 25 WellPoint?

1 A. No. I contracted with another physician who was in  
 2 charge of staffing the emergency room.  
 3 Q. So there was another physician who had a contract  
 4 with the hospital to provide ER services. You  
 5 contracted with him to fulfill the hospital's need  
 6 for ER services?  
 7 A. Yes.  
 8 Q. How long did you do that?  
 9 A. Two years.  
 10 Q. And then what did you do?  
 11 A. Pediatric residency.  
 12 Q. Where at?  
 13 A. Massachusetts General Hospital.  
 14 Q. Was that a two-year residency?  
 15 A. Two years of residency and six months of chief  
 16 residency.  
 17 Q. Didn't get much sleep during those 2 1/2 years, did  
 18 you?  
 19 A. No.  
 20 Q. So then what did -- where does that take us in  
 21 terms of the timeline?  
 22 A. 12/31/93.  
 23 Q. What did you do then?  
 24 A. I took a position at Indiana University School of  
 25 Medicine here in Indianapolis.

1 A. Managing Medical Director.  
 2 Q. Did you work here out of Indianapolis?  
 3 A. Yes, out of --  
 4 Q. And then I've had a chance to look at some  
 5 documents that have been produced, and you were  
 6 promoted on several occasions?  
 7 A. Yes.  
 8 Q. What was your first promotion?  
 9 A. So I was Managing Medical Director -- several  
 10 different positions, so let me -- so Managing  
 11 Medical Director for -- working for Randy Howard in  
 12 Indiana Healthcare Management. So it was a  
 13 position -- the next position was working for Dawn  
 14 Wood as a Managing Medical Director in Medicaid.  
 15 Q. Is that D-O-N or D-A-W-N?  
 16 A. D-A-W-N.  
 17 Q. All right.  
 18 A. The next position after that was being promoted to  
 19 VP.  
 20 Q. VP of what area?  
 21 A. Medicaid Clinical Operations. I -- actual verbiage  
 22 of that title, it may not be Medicaid Clinical  
 23 Operations, it might have been Vice President of  
 24 Medicaid, might have been Vice President of  
 25 Healthcare Management. I don't recall exactly how

1 that tabled -- or it might have been Vice President  
 2 and Medical Director.

3 Q. Whatever it is, you were working in the Medicaid  
 4 department?

5 A. Yes.

6 Q. And how long did you maintain this position?

7 A. The Medicaid, through -- I had Medicaid and that  
 8 work through the time that I left the company. I  
 9 assumed responsibility for Medicare in, I believe  
 10 it was 2010, mid-year 2010.

11 Q. You assumed responsibility for the Medicare  
 12 portion?

13 A. Medicare Clinical Operations.

14 Q. Did you also have responsibility for the Medicaid?

15 A. Yes, it was on top of.

16 Q. And that --

17 A. And then --

18 Q. Go ahead.

19 A. Then sometime in 2011, assumed responsibility for  
 20 Enterprise Quality.

21 Q. And can you describe for me in 40 words or shorter  
 22 what Enterprise Quality is?

23 A. It's the -- it's health plan quality across all  
 24 lines of business, so commercial, Medicare and  
 25 Medicaid.

1 know, vacancies then were filled, so ...

2 Q. Let's just try to narrow it. In August of 2010,  
 3 can you tell me who was reporting to you, to the  
 4 best of your recollection, and what their position  
 5 was?

6 A. To the best of my recollection, I had a staff VP  
 7 Medical Director of Medicaid.

8 Q. All right.

9 A. And I believe that was David Buchsbaum.

10 Q. Okay.

11 A. A staff VP Medical -- or a staff VP Clinical  
 12 Operations for Medicaid; and that was Jean Piercy.

13 Q. All right.

14 A. A staff VP Medical Director for Medicare; and that  
 15 was Jim Luciano, that's L-U-C-I-A-N-O.

16 Q. Okay. Did you have a clinical op for Medicare?

17 A. Yes. Linda Vetter.

18 MR. VALLE: What was the last name?

19 THE WITNESS: Vetter, V-E-T-T-E-R.

20 A. And I had a staff VP for pharmacy; and that was  
 21 Alex Ruggieri, R-U-G-G-I-E-R-I. And then, finally,  
 22 I had a business -- what was the title? What did  
 23 we call them, like a business project manager.  
 24 That wasn't the right title, but Naomi Inaba.

25 Q. How do you spell her last name; do you know?

12 1 Q. Have you ever sued anybody before?

2 A. No.

3 Q. Ever been sued before?

4 A. No.

5 Q. And I think you said you'd never given a  
 6 deposition. Have you ever given testimony under --  
 7 in any circumstance?

8 A. Yes.

9 Q. When was that?

10 A. 19 -- roughly 1990.

11 Q. And what was the nature of the case that you were  
 12 called upon?

13 A. I was giving testimony on behalf of being an  
 14 emergency room physician who saw an individual who  
 15 had committed a crime; and I needed to describe the  
 16 injuries.

17 Q. All right. So in 2010, you were in charge of both  
 18 Medicaid and Medicare?

19 A. Clinical Operations.

20 Q. Clinical Operations, excuse me. And who reported  
 21 to you at that time?

22 A. So that's a challenging question to answer, because  
 23 there were lots of changes in the structure of the  
 24 organization based on vacancies, you know, at say a  
 25 staff vice president level who then left or, you

1 A. I-N-A-B-A.

2 Q. And then do you recall who was reporting to Jean  
 3 Piercy?

4 A. Pam reported to Jean Piercy. I don't recall the  
 5 names --

6 Q. Anyone else?

7 A. -- of other people.

8 Q. And then Ann Gardner would have reported to Pam  
 9 Kapustay?

10 A. Correct.

11 Q. Okay. Tell me how you became involved in any  
 12 investigation relating to either Ms. Kapustay or  
 13 Ms. Gardner.

14 A. So I was asked -- I mean, I became involved  
 15 probably -- I became involved by virtue of  
 16 supervising Jean Piercy. And we would discuss the  
 17 decisions that she was making in her organization.

18 Q. Okay. In other words, Jean reported to you?

19 A. Correct.

20 Q. Did Jean indicate to you that there was an issue  
 21 that had arisen in her organization?

22 A. Can you be more specific?

23 Q. Yeah, first of all, let me figure out how specific  
 24 I'm going to have to be. Did you have a chance to  
 25 review any documents or anything before today's

1 STATE OF INDIANA )  
2 ) SS:  
3 COUNTY OF HENDRICKS )  
4 I, Dana S. Miller, RPR, CRR, a Notary Public in  
5 and for the County of Hendricks, State of Indiana at  
6 large, do hereby certify that KAREN S. AMSTUTZ, the  
7 deponent herein, was by me first duly sworn to tell  
8 the truth, the whole truth, and nothing but the  
9 truth in above-captioned cause.

10 That the foregoing deposition was taken on  
11 behalf of the Plaintiffs at the offices of Gonzalez,  
12 Saggio & Harlan, 135 North Pennsylvania Street,  
13 Suite 1740, Indianapolis, Marion County, Indiana, on  
14 the 28th day of June, 2013, pursuant to the  
15 Applicable Rules.

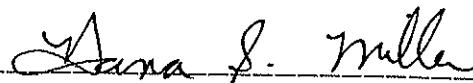
16 That said deposition was taken down in  
17 stenograph notes and afterwards reduced to  
18 typewriting under my direction, and that the  
19 typewritten transcript is a true record of the  
20 testimony given by said deponent; and thereafter  
21 presented to said deponent for his/her signature;

22 That the parties were represented by their  
23 aforementioned counsel;

24 I do further certify that I am a disinterested  
25 person in this cause of action; that I am not a  
relative or attorney of either party, or otherwise

1 interested in the event of this action, and am not  
2 in the employ of the attorneys for either party.

3 IN WITNESS WHEREOF, I have hereunto set my hand  
4 and affixed my notarial seal this 9th day of  
5 July, 2013.

6  
7   
8 Dana S. Miller

Dana S. Miller

9  
10 My Commission Expires:  
11 January 17, 2016

12  
13 County of Residence:  
14 Hendricks

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TO: CIRCLE CITY REPORTING  
REGISTERED PROFESSIONAL REPORTERS  
135 N. PENNSYLVANIA STREET  
SUITE 1720  
INDIANAPOLIS, IN 46204

RE: Indiana Rules of Procedure, Trial Rule 30 (E) and/or Federal Rules of Civil Procedure.

After having read my transcript, I wish to make the following changes:

\*PAGE 5 LINE# 8

CHANGE product services

TO products and services

REASON FOR CHANGE \_\_\_\_\_

\*PAGE 1 LINE# 1

CHANGE table

TO filled

REASON FOR CHANGE table was not what I said

\*\*PAGE 16 LINE# 11-12

CHANGE "Wagner" to "Herrera"

TO "Herrera"

REASON FOR CHANGE incorrect last name given

\*PAGE 16 LINE# 16

CHANGE No, The Response

TO NJ, Thomas

REASON FOR CHANGE incorrect last name given

\*PAGE 17 LINE# 11

CHANGE Audition

TO "Juanna Herrera and Kim Thomas"

REASON FOR CHANGE clarity answer

I am, therefore, signing my transcript conditioned on the fact that the above changes shall be noted with the transcript by the notary public.

Karen S. Anseth  
(Signature of Deponent)